

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re:,

DONALD G. HUBER,

Debtor.

MARK D. WALDRON, Trustee for the
estate of Donald G. Huber,

Plaintiff,

v.

DONALD G. HUBER, et al.,

Defendants.

CASE NO. C14-5083BHS

ORDER DENYING APPELLEE'S
MOTION TO DISMISS

This matter comes before the Court on Appellee/Trustee Mark D. Waldron's ("Appellee") motion to dismiss appeal as untimely (Dkt. 4). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On February 10, 2011, Debtor Donald Huber filed a Chapter 11 voluntary petition. Bankruptcy Petition No. 11-41013-PBS, Western District of Washington Bankruptcy Court, Dkt. 1. On May 8, 2012, an adversarial proceeding was initiated by Mark Waldron, trustee for the estate of Mr. Huber ("Trustee"). Cause No. 12-04171-PBS, Western District of Washington Bankruptcy Court, Dkt. 1 ("Adv. Pro.").

1 On February 21, 2013, Defendants Constance Dreyer and Gary Dreyer
2 (“Dreyers”) filed a motion for summary judgment on the issue of whether the Trustee
3 would acquire only an economic interest in certain LLC’s instead of a controlling interest
4 in those LLC’s. *Id.*, Dkt. 111. On November 25, 2013, the Honorable Paul B. Snyder,
5 United States Bankruptcy Judge, denied the Dreyers’ motion concluding that the “Trustee
6 succeeded to all of the Debtor’s interests in [the LLC’s], including management and
7 voting rights” *Id.*, Dkt. 183 at 11.

8 On December 13, 2013, the Trustee filed a motion for summary judgment “as to
9 the issue of control and voting rights in [the LLCs].” *Id.*, Dkt. 185 at 1. The Trustee
10 stated that, “[w]hile the Court’s prior decision and Order denied the Motion for Summary
11 Judgment filed by the Dreyers, the Court did not go so far as to enter an order granting
12 summary judgment to the Trustee on the issue of control.” *Id.* at 2. On January 9, 2014,
13 Judge Snyder granted the Trustee’s motion. *Id.*, Dkt. 190.

14 On January 21, 2014, the Dreyers appealed the order granting summary judgment
15 to the Trustee. Dkt. 1. On February 10, 2014, the Trustee filed a motion to dismiss the
16 appeal as untimely. Dkt. 4. On February 25, 2014, the Dreyers responded. Dkt. 5. On
17 February 28, 2014, the Trustee replied. Dkt. 7.

18 II. DISCUSSION

19 To appeal from a bankruptcy order or judgment a party must timely file a notice of
20 appeal within fourteen days of the entry of the order being appealed. Fed. R. Bank. P.
21 8002(a). “The failure to timely file a notice of appeal is a jurisdictional defect barring
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1 appellate review.” *Wiersma v. Bank of West (In re Wiersma)*, 483 F.3d 933, 938 (9th Cir.
2 2007).

3 In this case, the Trustee’s motion is frivolous and would essentially turn a shield
4 of flexible finality rules into a sword of time barring appeals. The Trustee argues that
5 Judge Snyder’s denial of the Dreyers’ motion for summary judgment “clearly resolved all
6 pending issues between” the Dreyers and the Trustee. Dkt. 7 at 2. The Trustee, however,
7 fails to recognize that there is a fundamental difference between denying requested relief
8 and granting relief. When Judge Snyder entered the order granting the Trustee’s motion
9 for summary judgment, the Dreyers’ substantive rights were determined. That order
10 started the clock for this appeal. Holding that Judge Snyder’s order denying summary
11 judgment started the clock for an appeal would set forth an illogical and impractical rule.
12 Therefore, the Court denies the Trustee’s motion.

13 III. ORDER

14 Therefore, it is hereby **ORDERED** that the Trustee’s motion to dismiss (Dkt. 4) is
15 **DENIED**.

16 Dated this 25th day of March, 2014.

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19 BENJAMIN H. SETTLE
20 United States District Judge
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